

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rebecca Jacobson	Team: Squad #14	CCRB Case #: 201508161	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/19/2015 4:31 AM	Location of Incident: [REDACTED]	Precinct: 79	18 Mo. SOL 3/19/2017	EO SOL 3/19/2017	
Date/Time CV Reported Sat, 09/19/2015 5:50 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/25/2015 10:49 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Burnett	30205	932383	079 PCT
2. An officer			079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Carlos Colon	07495	925095	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A . An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b) and § 87(2)(b).	A . § 87(2)(g) [REDACTED]
B . POM Patrick Burnett	Off. Language: PO Patrick Burnett made remarks to § 87(2)(b) based upon her perceived sexual orientation.	B . § 87(2)(g) [REDACTED]
C . POM Patrick Burnett	Off. Language: PO Patrick Burnett made remarks to § 87(2)(b) based upon her race.	C . § 87(2)(g) [REDACTED]
D . POM Patrick Burnett	Off. Language: PO Patrick Burnett made remarks to § 87(2)(b) based upon her gender.	D . § 87(2)(g) [REDACTED]
E . POM Patrick Burnett	Force: PO Patrick Burnett used physical force against § 87(2)(b).	E . § 87(2)(g) [REDACTED]
F . POM Patrick Burnett	Force: PO Patrick Burnett used a chokehold against § 87(2)(b).	F . § 87(2)(g) [REDACTED]
G . POM Patrick Burnett	Force: PO Patrick Burnett restricted § 87(2)(b)'s breathing.	G . § 87(2)(g) [REDACTED]
H . POM Patrick Burnett	Other: There is evidence suggesting Patrick Burnett provided a false official statement in violation of PG 203-08	H . § 87(2)(g) [REDACTED]

### Case Summary

On September 19, 2015, Sgt. Alan Myrthil filed this complaint via phone with IAB on behalf of § 87(2)(b) because she sustained an injury while in police custody. On September 25, 2015, IAB forwarded this complaint to the CCRB via log number 2015-28231.

On September 19, 2015, at approximately 4:31 a.m., § 87(2)(b) was driving when she was stopped § 87(2)(b) in Brooklyn by PO Patrick Burnett and PO Carlos Colon, of the 79<sup>th</sup> Precinct, after she ran a red traffic light. An officer allegedly used the word “fuck” while addressing § 87(2)(b) and her cousin, § 87(2)(b) (**Allegation A**). During the course of the car stop, § 87(2)(b) was determined to have an open warrant and was arrested. While being arrested, officers allegedly told § 87(2)(b) “Calm down, get in the backseat, you’ll be all right, faggot.” (**Allegation B**) PO Burnett got into the backseat with § 87(2)(b) and allegedly called her a “stupid black bitch” and a “dirty black bitch,” (**Allegations C and D**) and then punched § 87(2)(b) in the face (**Allegation E**). PO Burnett allegedly grabbed the back of § 87(2)(b)’s neck and choked her (**Allegation F and G**), while continuing to punch her (**Allegation E, cont.**), at which point § 87(2)(b) bit PO Burnett’s arm. In response, PO Burnett allegedly screamed, “Oh you stupid black bitch, you stupid black bitch.” (**Allegations C and D, con’t.**)

There was no video footage for this case.

The case was submitted for panel review one week after the 90-day benchmark. Delays were caused by attempts to contact § 87(2)(b) who did not file the initial complaint, but eventually cooperated, and to interview PO Colon, who had to be rescheduled after he failed to appear for his first interview.

### Mediation, Civil and Criminal Histories

This case was unsuitable for mediation given § 87(2)(b)’s arrest (BR 01). On December 28, 2015, a notice of claim request was submitted and will be added to the case file upon receipt. § 87(2)(g)

§ 87(2)(b)

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)’s first CCRB complaint (BR 03).
- PO Burnett has been a member of the NYPD for 12 years, has had three previous allegations against him involving one case. Case 200604629 contained an allegation that he used offensive language; § 87(2)(g) Furthermore, no determination of fact was made in that case because it was closed as complainant uncooperative.

### Potential Issues

Two additional civilians were present at the beginning of the incident: § 87(2)(b) and § 87(2)(b) and § 87(2)(b) did not want the CCRB to interview § 87(2)(b) who is § 87(2)(b) old, and independent attempts to locate contact information for her through LexisNexis and CLEAR were unsuccessful. § 87(2)(b) provided a phone number for § 87(2)(b) but it was a non-working number, and independent attempts to locate other contact information for her through LexisNexis and CLEAR were unsuccessful. As of December 30, 2015, neither § 87(2)(b) nor § 87(2)(b) was incarcerated. Ultimately, it was unlikely that their testimony would have altered the recommended dispositions, given that § 87(2)(b) and § 87(2)(b) stayed in the civilian vehicle while the allegations occurred after § 87(2)(b) had been taken to the police car

and then after the police car had pulled away from the scene.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

§ 87(2)(b) alleged that an officer, upon approaching the vehicle, cursed at her and § 87(2)(b) did not allege that any officer used profanity. § 87(2)(b) described the officer who cursed as a uniformed white male in his mid- to late-30s, 5'5"-5'6", with a medium build, short dark § 87(2)(b) hair. This description was almost identical to her description of another officer on scene, and it matches neither of the only two officers on scene. PO Burnett is § 87(2)(b) old white male, 6'1" tall, 230 pounds, with receding § 87(2)(b) hair (BR 04). PO Colon is a § 87(2)(b) old Hispanic male, 5'7" tall, 185 pounds, and bald (BR 05). Without more accurate or reliable descriptions, the investigation could identify the subject of this allegation. Accordingly, **Allegation A** is pleaded against "an officer" from the 79<sup>th</sup> Precinct.

§ 87(2)(b) alleged that an officer used offensive language during the incident. § 87(2)(b) recalled hearing two voices making offensive comments, but did not know which officer said what, whereas § 87(2)(b) attributed all the comments to one officer. The investigation determined that only PO Colon and PO Burnett were present. The descriptions provided by § 87(2)(b) and § 87(2)(b) of the officer who used offensive language were not consistent with each other and did not match the pedigree information of either PO Colon or PO Burnett. However, § 87(2)(b) said the officer who used offensive language was the same officer who was in the backseat with her and punched her, and PO Burnett identified himself as the officer who rode in the backseat and physically struggled with § 87(2)(b). Accordingly, **Allegations B, C, D, E, F, and G** have been pleaded against him.

#### **Allegations not pleaded**

- **Vehicle stop:** It is undisputed that § 87(2)(b) ran a red light, and she was charged with this offense. As such, no vehicle search was pleaded.
- **Physical force:** § 87(2)(b) stated that officers dragged § 87(2)(b) and slammed her into the trunk area of their vehicle. Although § 87(2)(b) originally described herself as being dragged to the car, she did not describe it to the degree of severity that § 87(2)(b) did and later described herself as walking to the police vehicle. § 87(2)(b) did not allege that officers slammed her into the vehicle. Thus, neither action has been pleaded.

#### **Allegation A – Discourtesy: An officer spoke discourteously to § 87(2)(b) and § 87(2)(b)**

In § 87(2)(b) CCRB testimony, she alleged that when the officers first approached the vehicle, she and § 87(2)(b) were standing outside the vehicle and an officer said to them, "You need to get the fuck back in the car." § 87(2)(b) did not corroborate this or allege that any profanity was used.

§ 87(2)(g) The officers both said that when they approached, § 87(2)(b) and the other passengers were inside the vehicle. PO Colon said that at one point, he had to ask § 87(2)(b) to exit, not enter the vehicle, and PO Burnett denied speaking to them at this point. Both officers said it was § 87(2)(b) who was cursing during the incident.

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Offensive Language: PO Patrick Burnett made remarks to § 87(2)(b) based upon her perceived sexual orientation.**

**Allegation C – Offensive Language: PO Patrick Burnett made remarks to § 87(2)(b) based upon her race.**

**Allegation D – Offensive Language: PO Patrick Burnett made remarks to § 87(2)(b) based upon her gender.**

§ 87(2)(b) alleged that an officer, identified as PO Burnett, told her, “Calm down, get in the backseat, you’ll be all right, faggot.” § 87(2)(b) described PO Burnett as making the initial statement to her after she was handcuffed, while being placed into the police vehicle. § 87(2)(b) also alleged that after PO Burnett got into the backseat of the car with her, a point at which § 87(2)(b) would not have been within earshot, he called her a “stupid black bitch” a few times and called her a “dirty black bitch.” § 87(2)(b) also stated that after she bit PO Burnett, he said to her, “Oh you stupid black bitch, you stupid black bitch, you like this, you like this.”

According to § 87(2)(b) was referred to as a “nigger” a few times, and an officer called her “dirty” and called her a “bitch.” (BR 06-07). § 87(2)(b) said she heard the offensive remarks as § 87(2)(b) was being taken to the police car.

PO Burnett and PO Colon denied making any of these statements or hearing any other officer say them (BR 08-09).

§ 87(2)(g)

§ 87(2)(g)

**Allegation E – Force: PO Patrick Burnett used physical force against § 87(2)(b)**

**Allegation F – Force: PO Patrick Burnett used a chokehold against § 87(2)(b)**

**Allegation G – Force: PO Patrick Burnett restricted § 87(2)(b) breathing**

§ 87(2)(b) alleged that after placing her in the backseat of the police car, PO Burnett got into the car with her and punched her in the face. § 87(2)(b) began yelling, “What the fuck is wrong with you? What are you doing to me? Help!” § 87(2)(b) stated that other officers got into the front seat and tried to pull PO Burnett off of her. However, § 87(2)(b) also stated that PO Burnett stopped hitting her when the other officers got into the car, but then when they began driving, he resumed punching her. PO Burnett grabbed § 87(2)(b) with his left hand and dragged her head down onto his legs, with his left hand wrapped around the back of neck and choking her. § 87(2)(b) explained that PO Burnett’s hand was so large that with it wrapped around the back of her neck, it reached the front of her neck. With his other hand, PO Burnett continued punching her in the face. § 87(2)(b) estimated that PO Burnett punched her eight to ten times, on her face and eye. After the sixth hit, § 87(2)(b) bit PO Burnett on his wrist, she could not recall which wrist she bit. § 87(2)(b) continued biting PO Burnett’s wrist, she was conscious of getting his blood in her mouth during the bite, until other officers dragged her off of him when they arrived at the stationhouse.

§ 87(2)(b)’s arrest photograph shows her right eye swollen shut and significant swelling to the right side of her face (BR 10). Both PO Colon and PO Burnett was shown § 87(2)(b)’s arrest photograph. PO Burnett denied observing any injuries or swelling on § 87(2)(b) similar to what was shown in her arrest photograph and denied seeing anything during the incident that would have caused an injury similar to that. PO Colon noticed some swelling on § 87(2)(b)’s face when she was brought into the stationhouse. Upon viewing her photo, he stated that the swelling he had referred to had just seemed to be on the side of her face. He did not observe any injuries on § 87(2)(b) similar to what was displayed in the photo and did not see anything during the struggle that would have caused an injury like that. § 87(2)(b)’s medical records from § 87(2)(b) describe her patient complaint as “irrational behavior and facial trauma status post fighting with NYPD” and her chief complaint as “my eye is swollen” with the mechanism of injury listed as “fight/brawl.” § 87(2)(b) was diagnosed with minor swelling to her right eye. A CT scan of her facial bones was performed and revealed no acute fractures of the facial bones or of the orbits. Her medical records also describe § 87(2)(b) as being brought to the hospital in a body bag due to irrational behavior, as well as yelling, spitting, and kicking. The medical records note that she could not be changed into a hospital gown because she had to be kept in the body bag for safety.

As all of PO Burnett’s alleged actions took place within the police vehicle, § 87(2)(b) did not witness any of it. However, § 87(2)(b) stated that when § 87(2)(b) was placed in the police vehicle, she did not see any injuries to her and as the police car took off, § 87(2)(b) heard § 87(2)(b) was screaming “Someone help me, someone help me.” The next morning when § 87(2)(b) saw § 87(2)(b) her eye was swollen to the size of a baby’s fist.

PO Burnett and PO Colon both stated that prior to arresting § 87(2)(b) she was involved with a physical altercation with § 87(2)(b). PO Burnett made the decision to arrest § 87(2)(b) after running a warrant check which revealed she had an open warrant. PO Burnett and PO Colon broke up the fight between the two. PO Burnett stated that § 87(2)(b) was still yelling at § 87(2)(b) after the fight had been broken up and continued yelling even when she was placed inside of the police vehicle, trying to yell out of the window. After the car pulled away from the scene, § 87(2)(b)’s focus shifted to PO Burnett and she asked him, “Why the fuck are you arresting me?” Approximately a minute after pulling away from the scene, § 87(2)(b) bit PO Burnett on his right forearm. Prior to the biting, PO Burnett had not had any physical contact with § 87(2)(b). Biting caused PO Burnett’s skin to break and drew blood. PO Burnett pushed § 87(2)(b) on her head with an open palm. PO Burnett denied making any movement

towards § 87(2)(b)'s head with anything other than an open palm and denied punching her at any time. He did not ever come into contact with her neck and denied wrapping his hand around her neck, head, or any other part of her body. PO Burnett told PO Colon, "She's biting me." PO Colon then stopped the car short. This motion dislodged § 87(2)(b) from PO Burnett's arm as they both fell forward from the abrupt stop.

PO Burnett's left hand was fractured as a result of this incident. PO Burnett refused to sign a HIPAA form for his medical records, but during his interview stated that his fifth metacarpal was fractured. The fifth metacarpal is commonly referred to as a "Boxer's fracture" and the injury is consistent with the action of punching a firm object using a closed fist (BR 11-12). PO Burnett provided no explanation for how his hand came to be injured during the incident, stating that during the struggle it "could have hit something." He was not sure if he hit it on something in the car and did not recall feeling any pain to his hand until the incident concluded and he was back at the stationhouse.

PO Colon was driving for less than a minute when he heard PO Burnett yelling, "She's biting me, she's biting me." PO Colon stopped short on Tompkins Avenue and DeKalb Avenue, turned around, and saw § 87(2)(b) biting PO Burnett on his forearm, he could not remember which arm it was. To me PO Colon, it looked like PO Burnett was trying to push § 87(2)(b) off, pushing her with an open hand. Prior to this, PO Colon did not see PO Burnett have any physical contact with § 87(2)(b). PO Colon did not see PO Burnett strike § 87(2)(b) with a closed fist or make a motion similar to punching and did not see PO Burnett make any other arm movements, besides the open palm pushing, which came in contact with § 87(2)(b)'s head or neck. PO Colon decided that it was best to get back to the stationhouse as soon as possible and continued driving. He believed that PO Burnett and § 87(2)(b) continued struggling until they got to the stationhouse, a distance of approximately two blocks. By the time they reached the stationhouse, PO Burnett had managed to get § 87(2)(b) off of him. PO Burnett did not tell PO Colon any details of how he managed to get § 87(2)(b) off of him and did not know how PO Burnett's hand came to be injured.

§ 87(2)(g)

PO Burnett offered no other explanation for his injury, and both officers denied observing any injuries to § 87(2)(b) or an explanation for how she sustained the injuries displayed in her arrest photograph, while her medical records attribute her injuries to a physical altercation with the NYPD.

§ 87(2)(g)

According to Patrol Guide section 203-11, officers may only use the minimum force necessary to overcome a suspect's resistance (BR 13).

§ 87(2)(g)

§ 87(2)(g)

**Allegation H – Other: There is evidence suggesting PO Patrick Burnett provided a false official statement in violation of PG 203-08.**

The CCRB recommends that the NYPD conduct further investigation as there is evidence to suggest that PO Burnett provided a false official statement. The evidence is as follows:

During PO Burnett's CCRB interview on December 10, 2015, he denied ever punching § 87(2)(b). PO Burnett stated that the only physical contact he had with § 87(2)(b) was pushing her with an open palm and denied knowing how he came to fracture his hand or knowing how § 87(2)(b) sustained injuries to her face. During the CCRB interview, Inv. Jacobson and PO Burnett had the following exchange.

[25:40]

**Inv. Jacobson:** So, besides pushing her head with an open hand and her falling off through the motion of the car, did you have to do any other movements, any other physical contact with her to get her off?

**PO Burnett:** No

**Inv. Jacobson:** How was your hand injured during this time?

**PO Burnett:** I'm not sure, it got broken at some point.

[27:21]

**Inv. Jacobson:** ...any movement towards her head with not an open palm?

**PO Burnett:** No.

**Inv. Jacobson:** Did you ever punch her at any time?

**PO Burnett:** No.

According to Patrol Guide Procedure 203-08, the intentional making of a false official statement is prohibited and will be subject to disciplinary action (BR 14). The statement must have been proven to be made, material, and intentionally false (Dep't of Correction v. Centeno, OATH Index No. 2031/04 (2005)) (BR 15).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

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Squad: 14

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date